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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,551	06/24/2003	Thomas A. Makowski	5150-80201	1235
Jeffrey C. Hood Meyertons, Hood, Kivlin, Kowert & Goetzel PC P.O. Box 398 Austin, TX 78767				
7590 04/27/2009				
EXAMINER				
DAO, THUY CHAN				
ART UNIT		PAPER NUMBER		
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MAIL DATE		DELIVERY MODE		
04/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: THOMAS A. MAKOWSKI, RAJESH VAIDYA,  
DEBORAH E. BRYANT and BRIAN M. JOHNSON

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Application No. 10/602,551  
Technology Center 2100

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Mailed: April 27, 2009

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Before ERIC W. HAWTHORNE, *Supervisory Paralegal Specialist*  
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 4, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

### EXAMINER'S ANSWER, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed October 28, 2008, under the heading "Grounds of rejection" is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading "New Grounds of Rejection" in the Examiner's Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8<sup>th</sup> ed. Rev. 6, Sept 2007) for details.

Specifically, the Examiner's Answer sets forth a rejection of claims 69-92 as being rejected under 35 U.S.C. 102(b); whereas the last Office action, mailed March 10, 2008, finds that claims 69-92 are rejected under 35 U.S.C. 102(e). Correction of all Grounds of rejection for all claims is required.

### EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed in this application on December 12, 2008. There is no evidence on the record indicating that the Examiner has considered the Reply Brief in accordance with 37 CFR § 41.43(a)(1) and MPEP § 1208, part II.

**CONCLUSION**

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to vacate the Examiner's Answer mailed October 28, 2008;
- 2) to generate a new Examiner's Answer setting forth the correct Grounds of rejection and to correct other sections of the Answer as may be required;
- 3) to include the approval of the TC Director or his/her designee (as required for any new Grounds of rejection);
- 4) to consider the Reply Brief filed December 12, 2008, as indicated above;  
and
- 5) for such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWH/saw

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